

September 19, 2019

SENT VIA EMAIL AND US MAIL

Senator Paul Anderson
Chair – Senate Higher Education Finance and Policy Committee
Minnesota Senate Building
95 University Avenue West, Room 2103
Saint Paul, MN 55155

Dear Senator Anderson,

Thank you for your inquiry of September 12th regarding the Institute on the Environment. I share your concerns and am confident that the actions we have taken were strong and appropriate. I hold very dear the values we espouse and our connection to the citizens of Minnesota.

We have responded to your questions in the attached document. I am happy to discuss this further as you may wish.

Sincerely,



Joan T.A. Gabel

Response to Senator Paul Anderson – Letter of September 12, 2019

Hiring Process

1. It appears that staff at the Energy Transition Lab (ETL) crafted the position with a specific candidate in mind, is this a common hiring practice at the University?

- The common practice at the University is for a college or unit to determine what work they have and then write a job description that fits the work. Writing a job description with an individual in mind is not against University policy for a temporary position, which is often built around a short-term project-based need. Doing so is not always appropriate, however; every situation needs to be evaluated on its own facts and circumstances.

In this situation, our hiring practices put at risk a core value of the Institute on the Environment, the University, and many of our stakeholders and partners. IonE exists to engage the University and the broader community in service of our state and the world. To do this work, the Institute must take steps to avoid even the appearance of partisanship or a conflict of interest. Learning from what happened, IonE will be implementing additional measures to hold its hiring practices – even for temporary positions – to a higher standard.

2. As Executive Director of ETL, Ellen Anderson asked a prospective candidate, Rep. Jamie Long, to assist her in creating the position description for the fellowship. Is that a common practice at the University?

- Asking a candidate to assist in creating a job description is not a common practice. It is the responsibility of the college or unit to determine what work they have and then craft an appropriate job description.

3. Besides Ms. Anderson, how many staff members at the University were involved in the hiring process of Rep. Long? How many staff members participated in creating the position description?

- Four University staff were involved in the hiring process. In addition to Anderson, one other staff member (ETL Program Manager Barb Jacobs, Anderson's direct report) participated in creating the position description. IonE Associate Director Melissa Kenney (Anderson's supervisor) reviewed and approved the final job description, unaware of the circumstances of its creation. Staff in the central Office of Human Resources, also unaware of the circumstances of the position creation, reviewed a final job description presented to them to verify the civil service job classification. A fourth staff member (IonE Administrative Director April Snyder), also unaware of the circumstances of the position development, helped facilitate the new position creation and classification

through the Office of the Vice President of Research (OVPR) HR and helped manage the hiring process with information from Anderson about final candidates and the outcome of interviews.

4. Was Ms. Anderson in communication with any other prospective applicants prior to posting the position?

- We are not aware of any such communication. We do know that after the position was posted, there were six total applicants. It was determined that two applicants did not meet minimum qualifications. Four applicants were then reviewed by IonE; three were interviewed.

5. What internal controls does the University have in place to ensure that every hiring process is fair and equitable?

- The University has policies on hiring practices. Training is provided on a regular basis to human resource professionals. The Office of Human Resources provides guidance, when contacted, to colleges and units conducting hiring processes. The Office of Internal Audit conducts audits. Individuals who feel the process was unfair can contact the University's UReport, the Office of Equal Opportunity and Affirmative Action, or the Office of Conflict Resolution for investigation and resolution.

6. Was there any consideration from the University on how Rep. Long's position as a legislator could have influenced his hiring or his ability to succeed in this fellowship?

- Some of IonE's proudest work has been serving as a nonpartisan convener and providing evidence-based information for Minnesota leaders and governing bodies. In this case, the Institute recognizes that, as a whole, it did not give adequate consideration to whether Rep. Long's legislative position could have influenced his hiring or his ability to succeed in the short-term position, in practice or perception.

We know that an HR consultant advised ETL not to rush the process of finding the best candidate for the job. We also know that an ETL manager raised a question, as a comment in one of the job description drafts, about whether or not it would be strange for Rep. Long to help design a legislative fellows program he might later apply to.

Neither of these interventions sparked the scrutiny necessary. IonE has taken actions to ensure that going forward, its hiring practices will align with its core values.

7. During Rep. Long's time at the ETL, what steps did the University take to maintain separation between his role at the ETL and his position as a legislator?

- Rep. Long was hired into a short-term research and analysis position that did not overlap with the legislative session. As is true of all research conducted at IonE, his work was not (and would not have been) related to specific policies or bills before the state legislature.

IonE engages in research and nonpartisan policy education work for the purpose of providing evidence, analysis, and tools for decision makers of all backgrounds.

8. *What were Rep. Long's responsibilities in his time in the ETL?*

- During his two-month employment (7/22–9/20), Rep. Long worked in accordance with the job description, allowing for the fact that his day-to-day efforts fluctuate based on project milestones. Overall, Rep. Long spent some 75 percent of his time conducting research on Minnesota's clean energy system. He spent the remainder of his time supporting ETL events and performing other duties as assigned, including preparing for guest lectures, helping plan for a conference on climate litigation, and identifying candidate projects for an energy clinic.

Rep. Long did not begin any work associated with developing a clean energy legislative fellows program. None of his research or other job duties were related to particular energy policies or legislation before the Minnesota legislature.

9. *Does the University have any other staff, faculty, or contractors who are current legislators?*

- At present, there are two legislators who are employed by the University of Minnesota. Minnesota Representative Jennifer Schultz is a tenured faculty at the University of Minnesota Duluth, a position she held prior to her election. Minnesota Representative Frank Hornstein is a lecturer in the College of Food, Agricultural and Natural Resource Sciences, a position he has held each fall semester since 2016.

Donations

Before answering your specific question about “donations,” it is important to understand the distinctions that might arise when we talk about donations to the University from the private sector.

The University of Minnesota Foundation serves as the central development office of the University of Minnesota and provides receipts for all gifts to the University. The IRS defines a charitable gift as a transfer that is voluntary, and is motivated by a “detached and disinterested generosity.”¹ Any exchange transaction that is not a gift, that is, between a funder and the University that would provide a substantial privilege or quid pro quo benefit to that funder, is a transaction that would require a contract that would not be negotiated or managed by the University of Minnesota Foundation. Those grants are administered and managed by the University's Sponsored Projects Administration because the agreement requires more than simple reporting and stewardship, or entails other oversight or compliance that is managed by Sponsored Projects as dictated by University Regents' policy. We address those types of donations in a fourth question.

Is it common practice for the University to solicit private donations to pay for a specific position, or hire specific individuals?

¹ *Commissioner v. Duberstein*, 363 U.S. 278, 285 (1960).

Is it common practice for the University to solicit, or accept, donations with the explicit purpose of hiring certain individuals? If so, does the University return donations if the certain individual is not hired?

- Answer below combines questions 1 and 2.

Gifts may have a designated purpose, including a purpose such as hiring a specific position. However, a donor does not have the right to direct the hiring process or choose a specific person to fill a position.

It is common for the University to solicit gifts for a particular faculty position and quite frequently, the conversation with the donor will include a discussion about who in particular we hope to recruit for the position. ***The donor does not get to decide who we are recruiting to fill a particular position, nor by virtue of their gift, have we obligated the person to accept an offer to the University of Minnesota.*** Indeed, by virtue of the fact that the donor receives a charitable tax receipt for their gift, they understand that their influence over their gift sits only at the level of specifying the gift's purpose but they cannot direct the specific use of the gift such as selecting the individual hired to fill a funded position.

In addition, all fund agreements for faculty positions give the University, not the donor, the right to name and award the professorship or chair according to the timeframe indicated in the agreement. While a donor may be drawn to funding such a position because of a desire to support a certain individual who is already a University employee, the support cannot be conditional on that person's employment and those funds will continue to fund the University position according to University policy, after the departure of any previous faculty or chair position.

Charitable donations, or gifts, cannot be returned to an individual who has received the charitable receipt. In the event the University is unable to satisfy the purpose for which a gift was made, a redirection of those funds is made in conversation with the donor. Under the terms of its form gift agreement, the University of Minnesota Foundation retains the ultimate right to make a change in purpose decision.

How does the University ensure that donors do not have an undue influence on the work of the University?

- The Internal Revenue Code provisions governing charitable gifts provide that a donor cannot retain the right to direct the use of funds gifted to a charitable institution such as the University. As such, a donor may only provide non-binding recommendations on an ongoing basis, and receive stewardship and financial reports, but donors cannot retain the right to direct their gifts or any operational decisions of the University. The attempt to retain those types of rights would disqualify the gift as a charitable gift and the University of Minnesota Foundation would not accept such a "gift."

Of course, the University works collaboratively with all donors as charitable contributions provide a substantial amount of financial support for the University's operations. However, the University holds itself to the highest standards of academic integrity and ensures that the University is making all operational decisions, not any donor or donors.

What influence might a grantor/sponsor have over a contract with the University?

- Where a grant or award is made by a third party, **not in the form of a gift** but as a contract, the funder may require or request a specific competency or collaboration. In those cases, because a contract is in place, the University's Sponsored Projects Administration would ensure compliance with the terms of the contract and also ensure that all University policies are complied with when fulfilling the terms of the grant agreement as dictated by University Regents' policy.

When applying for a sponsored award from a private funder, the sponsor may require or request a specific competency or collaboration between entities. In those cases, any faculty involved would need to comply with all University policies when fulfilling the terms of the grant or contract agreement. The individual tasked with leading the project is always named in the grant or contract proposal and the sponsor has the ability to review that individual's qualifications as a part of their funding decision. Typically, this individual can be changed only with the approval of the sponsor (typically because the person later retires or leaves the University.) Sponsor rules would dictate whether agency prior approval would be required before substituting any other individuals working on the project, but it would not be considered appropriate for the sponsor to dictate to the University who should be hired. If the University proposes someone unacceptable to the sponsor, the sponsor has the right to terminate the award. In that case, the University will refund any unexpended balance.

Ellen Anderson's role

1. What were Ellen Anderson's duties and responsibilities as Executive Director of the ETL?

- ETL is a research group within the Institute on the Environment. ETL synthesizes research, conducts policy analysis, and engages University and external experts to understand the effectiveness of a range of low-to-no carbon energy solutions. Currently, ETL includes four full-time staff members (excluding Anderson), one part-time employee, and two student research assistants.

As Executive Director of ETL, Anderson supervised its staff, set a strategic direction for ETL, managed a set of research projects on renewable energy and energy storage, taught and wrote grants, and organized convenings and events related to the group's research themes.

2. *What is Ms. Anderson's current title?*

- Senior Energy Researcher.

3. *When was Ms. Anderson reassigned?*

- September 10, 2019. Under state law governing personnel data, we cannot share private personnel information about employees. As in all cases, we make work assignments based upon a variety of factors, including the needs and values of the unit, employee skills and qualifications, and other relevant factors.

4. *Does Ms. Anderson's new position include any supervisory responsibilities?*

- No. As of September 10, IonE Associate Director Melissa Kenney has assumed supervisory responsibilities for ETL staff.

5. *Does the University have any plans to review the hiring process of Rep. Long?*

- The University is in the process of reviewing the placement of a question regarding conflicts of interest on its job application to ensure that potential conflicts of interest are addressed early in the process and raised to appropriate levels of authority for review.